

INTERNAL REVENUE SERVICE

Department of the Treasury

Date: OCT 18 1995

Appeals Office
P.O. Box 2026
Cincinnati, Ohio 45201

Employer Identification Number:

Form Number:

1023

Key District:

Cincinnati

Person to Contact:

Contact Telephone Number:

RE: Application for Recognition of Exemption Under
Section 501(c)(3) of the Internal Revenue Code

Dear Sir or Madam:

This is our final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reasons:

You are not organized and operated exclusively for one or more tax exempt purpose as defined in section 501(c)(3) of the Code. More than an insubstantial part of your activities are not in furtherance of an exempt purpose. You serve a private rather than a public interest and are operated for the benefit of designated individuals and the persons by whom you were created. Accordingly, you do not qualify for exemption under section 501(c)(3) of the Code.

Contributions to your organization are not deductible under Code section 170.

You are required to file Federal income tax returns on Form 1120 for any years which are still open under the statute of limitations. Based on the financial information you furnished, it appears that returns should be filed for the years 1992 through 1994. You should file this return with the key district director, EP/EO division within 30 days from the date of this letter, unless a request for an extension of time is granted. Processing of income tax returns will not be delayed because you have filed a petition for a declaratory judgement under Code section 7428. You should file returns for later tax years with the appropriate service center shown in the instructions for those returns.

If you decide to contest this determination under the declaratory judgement provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgement.

We will notify the appropriate State officials of this action, as required by Code section 6104(c).

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Associate Chief, Appeals
Cincinnati

copy:

Internal Revenue Service

District Director

Department of the Treasury

P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to:

EP/EO

Employer Identification Number:

Date: SEP 28 1994

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of our principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and other wise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

9/26/94

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[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b) (2) of the Internal Revenue code provides in part that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

[REDACTED]

District Director

Enclosures: 3

Enclosure 1
Reasons for Proposed Denial of Exempt Status

[REDACTED]

You were incorporated [REDACTED] under the laws of the State of [REDACTED]. Your stated purposes in pertinent part are:

"...to operate as a social, support and educational group for youth."

Your activities consist of support groups for lesbian/gay/ bisexual teens; educational forums to address issues of concern to sexually minority youth; and social events, such as roller skating parties, movie matinees and dances.

You state social activities are for members only and are generally for a short time after educational and support meetings. Other social activities such as roller skating parties, movie nights and dances are scheduled from time to time and usually occur quarterly. Your letter dated [REDACTED] allocated your time as [REDACTED] percent devoted to support groups, [REDACTED] percent devoted to educational programs and [REDACTED] percent devoted to social activities.

Attendance at your activities is open to youth up to age 21. You state at your last meeting [REDACTED] percent of those present were under age 18 and [REDACTED] percent were 18 or over.

Your income consists primarily of gifts, grants, and contributions with your remaining income derived from fundraisers. Expenses are largely due to social events.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax:

Organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(2) of the Regulations states:

The term "exempt purpose or purposes", means any purpose or purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of 501(c)(3) of the Code.

an exempt purpose.

Rev. Rul. 78-305, 1978 - 2 C.B. 172 held that an organization formed to educate the public about homosexuality in order to foster an understanding and tolerance of homosexuals and their problems qualifies for exemption under section 501(c)(3) of the Code.

[REDACTED]

Rev. Rul. 69-384, 1969 - 2 C.B. 132 held that an organization created to maintain an amateur baseball association made up of players of college age is exempt under section 501(c)(4) of the Code.

Rev. Rul. 68-118, 1968-1 C.B. 261 held that a nonprofit organization that stimulates the interest of youth in the community in organized sports may qualify for exemption under section 501(c)(4) of the Code.

Rev. Rul. 70-4, 1970-1 C.B. 126 held an organization promoting and regulating a sport for amateurs is providing wholesome activity and entertainment for the social improvement and welfare of the community. This promotes the common good and general welfare of the people of the community and best qualifies for exemption under section 501(c)(4) of the Code.

Rev. Rul. 70-640 held that a nonprofit organization that provides personal marriage counseling services and conducts workshops and seminars on the subject of marital adjustment qualifies for exemption under section 501(c)(3) of the Code.

Rev. Rul. 66-179, 1966-1 C.B. 139 provides that the extent to which an organization engages in social activities for the benefit of its members is a factor in determining whether it is primarily engaged in social welfare activities. Even if a substantial part of the organizations activities consists of social functions for the benefit, pleasure and recreation of its members, it may qualify for exemption under section 501(c)(4) if it is primarily engaged in social welfare activities. In addition, the revenue ruling provides that if an organization conducts substantial social functions not in furtherance of any of the purposes specified in section 501(c)(3) of the Code it will not qualify for exemption under section 501(c)(3) of the Code.

Based on the facts given in your application and subsequent responses we believe your support groups and educational activities are consistent with section 501(c)(3) of the Code. Educational purposes are among those listed specifically in the Code. Your educational activities are consistent with those of Rev. Rul. 78-305 since you are educating the public on issues of homosexuality. Your support groups may be compared with the counseling services and workshops of Rev. Rul. 70-640 and therefore, consistent with the purposes of section 501(c)(3) of the Code.

However, your social activities may not be considered charitable, educational or religious. Social activities such as dances, roller skating parties, and movie nights are merely for the pleasure and recreation of your members. You contend that the events you sponsor provide a safe place for lesbian/gay/bisexual teens to meet with their peers and socialize in a nonthreatening way. The facts presented in your application indicate the events are not merely for individuals under the age of 18, but primarily attended by ([REDACTED] percent) individuals age 18 and over. Providing a place for adults to socialize is not a charitable or educational activity.

Enclosure I
Reasons for Proposed Denial of Exempt Status

social activities when directed towards a charitable class of individuals such as individuals under the age of 18, as described in Rev. Rul. 80-215 or senior citizens in Rev. Rul. 78-198 may be considered an educational or charitable activity. However, when social activities are directed toward adults the activity is merely considered social and recreational and may at its best be considered for the improvement of the social welfare of the community and as described in section 501(c)(4) of the Code. We contend your social activities constitute a substantial amount of your total activities. Therefore, as provided in Rev. Rul. 66-179 a substantial amount of your time is not in furtherance of the purposes of section 501(c)(3).

Accordingly, we have determined you do not qualify for exemption under section 501(c)(3) of the Code.

We have not determined whether you qualify under any other section of the Code. However, based on the facts presented it appears the activities you conduct may be compared to Rev. Rul. 69-384, Rev. Rul. 68-118 and Rev. Rul. 70-4 and you may under the proper circumstances meet the requirements of section 501(c)(4) of the Code.